IN THE

Supreme Court of the United States

October Term, 1960

No. 62 - 6

THEODORE R. GIBSON,

Petitioner,

v.

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

ROBERT L. CARTER,
20 West 40th Street,
New York 18, New York,

G. E. GRAVES, JR.,
802 N. W. Second Avenue,
Miami, Florida,

Attorneys for Petitioner.

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FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE.

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered on December 19, 1960.

Opinion Below

The opinion of the Supreme Court of Florida, reported at 126 So. 2d 129, is appended hereto, *infra*, at page 23.[1]

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[1] The opinion of the court below in the companion case, **Graham v. Florida Legislative Investigation Committee**, 126 So. 2d 133, is also appended hereto *infra* at page 29. The court there held that a deterrent effect upon the exercise of freedom of association resulting from the disclosure of an associational relationship with the National Association for the Advancement of Colored People had been established and, therefore, that the compelled disclosure of Graham's membership in the N.A.A.C.P. was not within the state's constitutional power. The thrust of the inquiry, the court said, was not Graham's subversive activities but his association in a legitimate organization. This was not proper, and his adjudication for contempt was, therefore, reversed.

of such witnesses and the production of such papers, bonds and documents, and to administer such oaths and to take such testimony and to make such expenditures within the limitation herein authorized as it may deem necessary in the performance of its duties.

(2) Should any witness fail to respond to the lawful subpoena of the committee, or having responded fails to answer all lawful inquiries or turn over evidence to this committee, the committee may file a petition before any circuit court in Florida setting up such failure on the part of said witness. On the filing of such petition the court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in its possession which is lawfully demanded. The failure of any witness to respond pursuant to the order of the court shall constitute a direct and criminal contempt of court and the court shall punish said witness accordingly.

Section 4. The committee shall report to the 1961 regular session of the legislature the results of its investigations, together with its recommendations, if any, for necessary legislation. The expenses of this committee, including necessary and regular expenses shall be paid from legislative expense, such total expenses not to exceed sixty-seven thousand five hundred dollars ($67,500.00), which shall be expended under the direction of the committee.

Section 5. The joint committee set up by chapter 57-125, Laws of Florida, 1957, is hereby extended in all respects so that it may continue to discharge its responsibilities as a party litigant on behalf of the state of Florida in the litigation above referred to until the appointment and organization of the committee provided for in this act shall become effective.

Section 6. This act shall take effect immediately upon becoming a law.

Statement

Background

The instant controversy has had a lengthy prologue. While the existence of the respondent committee dates from enactment of Chapter 59-207, Laws of Florida, 1959, the investigation which it is undertaking began in 1956. In that year pursuant to Chapter 31498, Laws of the Extraordinary Session of Florida, 1956, a committee of the legislature was established to make investigations into the activities of organizations and individuals "advocating violence or a course of conduct which would constitute a violation" of the laws of Florida. That committee undertook an investigation of the activities of the National Association for the Advancement of Colored People in Florida, on the theory that the organization's activities designed to undermine racial discrimination resulted from the infiltration and influence of Communists.

The committee filed a report with the legislature in 1957. Except for the enactment of Chapter 57-125, Laws of Florida, 1957, which created a committee to continue and complete the work of its predecessor, no legislation dealing with the infiltration of subversives into legitimate organizations operating in the field of race relations was recommended or adopted at the 1957 session of the Florida legislature.

The 1957 committee, in furtherance of its investigation of the extent of infiltration and influence of subversives on the N.A.A.C.P., held hearings in Miami and sought to secure the membership list of the Miami Branch of the N.A.A.C.P. so that the committee could determine whether members of the Communist Party were members of the Miami Branch. Disclosure of the names of N.A.A.C.P. members was refused.

Counsel for respondent sought the aid of the courts, with the result that petitioner and the other N.A.A.C.P. officials involved were ordered to turn over the N.A.A.C.P.

membership list to the committee. Before final adjudication at the trial court level, the Supreme Court of Florida granted a stay pending a hearing and determination on the merits. After hearing, that court held that Chapter 57-125, Laws of Florida, 1957, was valid. It concluded that the committee was pursuing a valid legislative objective in seeking to uncover and determine the extent of Communist infiltration in the N.A.A.C.P. Because of the overriding importance of the committee's investigation, the court concluded that *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, was inapposite and that the custodian of the N.A.A.C.P. membership list could be required to bring the members' names to committee hearings for the purpose of checking the list in answering inquiries about the N.A.A.C.P. membership of persons designated as subversive. See 108 So. 2d 729. Application for writ of certiorari was denied by this Court. 360 U. S. 919.

Before this Court acted, the committee, established pursuant to Chapter 57-125, Laws of Florida, 1957, was due to expire, and in establishing the instant committee, under Chapter 59-207, Laws of Florida, 1959, the life of the old committee was extended "to enable it to discharge its responsibility" in the litigation then pending in this Court until the appointment and organization of the instant committee had become effective.

In 1959, as in 1957, no legislation respecting Communist infiltration into organizations operating in the field of race relations resulted from the committee's investigation. The instant committee was created to press and complete the investigation undertaken by the 1956 and 1957 committees to determine the nature and extent to which petitioner's organization had been subjected to subversive penetration and influence.

The November 4-5, 1959 Hearings in Tallahassee, Florida

On October 30, 1959, petitioner was ordered to appear before the respondent committee on November 4, 1959,

in the State Capitol Building at Tallahassee and to bring the membership list in his possession or of which he was custodian pertaining to the identity of the members and those paying dues to the local and state N.A.A.C.P. organization (R. 4-5). Petitioner appeared as ordered, and it was established that he had custody of the records which the committee sought (R. 11, 12, 14).

At the outset the Chairman of the respondent committee read a statement setting forth the scope of the inquiry with which the committee was concerned (R. 19). The remarks consisted of a verbatim recital of Chapter 59-207, Laws of Florida, 1959 (R. 19-28), followed by a declaration that the hearing would be concerned with the activities of various organizations operating in Florida in the fields of "race relations . . . coercive reform of social and educational practices and mores by litigation and pressured administrative action . . . labor . . . education . . . and other vital phases of life in this State" . . . the aims, objectives and activities of the Communist Party and Communist-front organizations, and the degree, if any, to which Communists or communistic influence had succeeded "in penetrating, infiltrating and influencing the various organizations and members thereof which have been, or are now, operating in the above fields" (R. 28-29). The Chairman disassociated the committee from any intent to give the impression that the mere calling a witness to testify signified that the person called was a Communist. Each witness was given permission to make a short disclaimer of membership in the Communist Party, if he so desired (R. 30).

Arlington Sands was not present (R. 15), and the first witness bearing on this controversy was R. J. Strickland, employed as an investigator by the committee. He testified that he had conducted investigations concerning the activities of Communists in the South (R. 49); that an Augusta Birnberg was a member of the Communist Party (R. 50); that Edward Waller had now left the Party but was once a member, who had then been under instructions to infiltrate

the N.A.A.C.P., and that he had attended N.A.A.C.P. meetings on occasion in Dade County (R. 51); that James Nimmo, now in New York State, was once a Communist, but was no longer associated with the Party (R. 51); that Abe Sorkin was a member of the Party and a member of the N.A.A.C.P. (R. 52); that Charles Marks was a member of the Party (R. 52); that Myron Marks was a member of the Party (R. 53); that deposit slips showed that Leo Sheiner, a member of the Communist Party, was a contributor to the N.A.A.C.P.[2] (R. 53); that Charles Smolikoff was a Communist (R. 54); that Tess Kantor was a Communist (R. 54-55); that Leah Adler Benomovsky, formerly of Dade County, was a Communist (R. 55); that Louis Popps had been a member but was no longer believed to be associated with the Party (R. 55); that Emanuel "Manny" Graff (R. 55) and Bobbie Graff (R. 56), formerly of Miami, were members of the Communist Party; that Michael Shantzek (R. 56) was a member of the Party; and that each of the persons named had been a member or participated in meetings and affairs of the N.A.A.C.P. (R. 57). Then he read a list of 33 persons and stated that some were members of the Communist Party and that each in the recent past had been active in Communist-front organizations in Dade County (R. 57-58). Strickland then gave the names of five persons whom he identified as "present or past residents" of Dade County and as "present and/or past" members of the Communist Party (R. 59).

He was then asked to read the legend on the cards of members of the Communist Party describing their rights and duties (R. 60). As read, paragraphs 3 and 4 pledge each member to fight all forms of "discrimination and segregation and all ideological influences and practices of 'racial' theories . . ." and "to fight for the full social, political and economical equality of the Negro people, and for Negro and white unity" (R. 60-61).

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[2] These deposit slips were never produced either at the committee hearings on November 4, 5, 1959, and July 27, 1960, or at the court hearings on May 30, 1960 and August 30, 1960.

Petitioner's testimony followed. He stated that he was custodian of the membership list of the Miami Branch of the N.A.A.C.P., but had not brought these records with him (R. 63); that there were approximately 1,000 members in the Miami Branch (R. 67). He informed the committee that the membership records in his possession were kept for and covered the current year only (R. 63), that membership in the organization was for a 12-month period from the date of joining (R. 67); and that at the end of the 12-month period, a person was no longer a member of the N.A.A.C.P., and his card was removed, unless his membership was renewed (R. 65). He testified that he had been President of the Miami Branch and active in the N.A.A.C.P. for the past five years (R. 81).

Petitioner advised the committee that the N.A.A.C.P., beginning with its annual convention in 1950, and each year thereafter, had adopted anti-Communist resolutions excluding from the organization all members of Communist or other subversive organizations. Copies of these resolutions were left with the committee (R. 69). Father Gibson volunteered to cooperate with the committee by agreeing to answer any questions out of his own personal knowledge concerning membership in the N.A.A.C.P. of any person identified by the committee as subversive, but flatly refused to bring or produce the N.A.A.C.P. membership list at the committee hearings for the purpose of answering any such inquiries (R. 88). Petitioner based this refusal on the grounds that to produce the N.A.A.C.P. membership list at the committee hearings and to testify from these records would create the same fears, concerns and deterrents to the exercise of the right of freedom of association by members and prospective members of the N.A.A.C.P., which would result from the membership list being physically turned over to the committee (R. 74).

He was asked about 14 people previously identified as members of the Communist Party by Strickland (see *ante* p. 9-10). He was given the names and shown photo-

graphs of these individuals. In each instance petitioner stated that he was unable to identify the person named as associated with the N.A.A.C.P. (R. 79-87). Then he was asked whether he would bring the N.A.A.C.P. membership list to authenticate his testimony concerning membership in the N.A.A.C.P. of the 33 persons described by Strickland as either members of the Communist Party or active in Communist-front organizations. This petitioner refused to do (R. 88). He reiterated his offer to say, if asked, whether he knew these persons to be members of the N.A.A.C.P., but refused to bring the N.A.A.C.P. membership list to the committee hearing for the purpose of such testimony. Shortly thereafter the hearings adjourned for the day.

When the hearings resumed the next day, November 5, the first witness called was Arlington Sands. He stated that he was a member of the N.A.A.C.P., but did not know whether his membership had expired (R. 129). He had been active prior to 1949, had been off and on a member for the past ten years (R. 130); had not been to an N.A.A.C.P. meeting in two years (R. 130). He was then asked about the 14 identified as members of the Communist Party by Strickland. He recognized Shantzek (R. 132) and Leah Benomovsky (R. 133), but did not recall seeing them at an N.A.A.C.P. meeting. He did not remember Myron Marks as a member of the N.A.A.C.P. (R. 134), and had never seen Marks' father at an N.A.A.C.P. meeting (R. 135). He stated that he did not believe that Charles Smolikoff had been an N.A.A.C.P. member because the latter had not thought very highly of the N.A.A.C.P. (R. 136). Sands asserted that Leo Sheiner had represented the N.A.A.C.P. during the period when he had been an official of the organization, but he did not believe that Sheiner was a Communist (R. 139-140). He saw Abe Sorkin at N.A.A.C.P. meetings, but did not know whether he was a member (R. 141). He saw James Nimmo at N.A.A.C.P. meetings (R. 141), but never saw Ed Waller at any (R. 142). He denied having ever told Strickland on the prior Wednesday

that he had seen Augusta Birnberg (R. 143), Ed Waller (R. 144), Charles Smolikoff (R. 145), Leah Benomovsky, Myron Marks (R. 145), or Mike Shantzek (R. 146) at N.A.A.C.P. meetings. He did see Leo Sheiner there because he came to an N.A.A.C.P. meeting at Sands' invitation (R. 144). Strickland was recalled and testified that he had talked to Sands in Miami and that the latter had identified the 14 people in question with the Communist Party and the N.A.A.C.P. (R. 147-151).

Vernell Albury (R. 152-168), Ruth Perry (R. 180-192), G. E. Graves (196-198), officers of the Miami Branch, were shown photographs of the 14 alleged Communists. They uniformly denied knowing these people as members of the N.A.A.C.P., although in rare instances one or two of them had been seen at N.A.A.C.P. meetings.

Father Gibson was then recalled. He explained that a thorough investigation is made of all prospective Branch officers to make certain that no person connected with any subversive group becomes an officer of the N.A.A.C.P. He pointed out that no such investigation of each individual member is possible, but that if it comes to the attention of Branch officials that an individual member is engaged in subversive activities, then action is commenced to terminate his membership in the N.A.A.C.P. (R. 203); and that in the past five years there had been no expulsions from the Branch because of subversive activities (R. 204).

The Court Proceedings

On the basis of petitioner's refusal to produce the N.A.A.C.P. membership list at the committee hearings, proceedings were instituted in the Circuit Court of Leon County to require him to do so (R. 1). In his response to the order to show cause, petitioner invoked the protection afforded the exercise of rights of freedom of association under the Fourteenth Amendment to the Constitution of the United States as a justification for his refusal to comply with the state's request.

On May 30, 1960, at the pre-trial conference prior to hearing on the order to show cause, counsel for the committee asserted that there had been no claim that there had been any degree or amount of Communist infiltration in the N.A.A.C.P. "We say that we want to see, that we have reason to believe that there has been some and we want to investigate to determine the extent, if any, of such infiltration" (R. 257).

At the hearing an attempt was made to adduce testimony showing the committee had no evidence of Communist infiltration in the N.A.A.C.P. (R. 261); that the committee had no knowledge as to whether the 14 persons identified as Communists were members of the N.A.A.C.P. or the Communist Party (R. 262); that most of the persons had not been residents of Florida for the past five years (R. 262); that Strickland had no personal knowledge as to whether any of the persons identified were members of the Communist Party (R. 460); and that except for Nimmo, Waller and Popps, whom he indicated had left the Party, he had spoken to none of the persons about whom he had testified. The court ruled this evidence out of order, and proffers to that effect were read into the record.

Petitioner presented evidence to show the anti-Communist policy of the N.A.A.C.P. (R. 267); that the organization's officers charged with implementing the anti-Communist resolutions had no knowledge or evidence of any Communist infiltration in the Miami Branch during the past five years (R. 267, 319); that there had been a loss in membership in the N.A.A.C.P. because of fear of reprisals against persons identified as being members of the organization (R. 301-302); and incidents of persons publicly identified as being affiliated with the N.A.A.C.P. being subjected to threats and other pressures were cited (R. 271, 285, 300-301, 307, 311, 320-321, 324, 345, 359-361, 367-370).

On July 19, 1960, the trial court held that there were no constitutional barriers to prevent petitioner from being required to produce the N.A.A.C.P. membership list at

committee hearings for the purpose of verifying his testimony in respect to persons about whom he might be questioned. Father Gibson was ordered to appear before the committee on July 27, 1960 with the N.A.A.C.P. membership list for the purpose of answering committee inquiries (R. 417-420).

On July 27, 1960, petitioner appeared before the committee as ordered. He again indicated a willingness to testify from his own knowledge respecting the N.A.A.C.P. affiliation of any persons alleged to be subversive, but refused to produce the membership list (R. 429-433).

On August 30, 1960, petitioner was adjudged in contempt and sentenced to six months' imprisonment and $1,200 fine, or in forfeiture thereof an additional six months' imprisonment as punishment therefor (R. 465).

On December 19, 1960, the Supreme Court of Florida affirmed the judgment and conviction of the trial court (R. 469-478). Application was made for rehearing and, in lieu thereof, a stay to enable petitioner to apply for writ of certiorari to this Court (R. 480). On January 17, 1961, application for rehearing was denied, but execution and enforcement of the judgment was stayed for 60 days. The judgment was ordered further stayed until the matter had been disposed of by this Court or until further orders by the Supreme Court of Florida, if application for review was made to this Court within the 60 day stay granted (R. 481).

Reasons for Allowance of the Writ

1. The decision below is in apparent conflict with *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449 and *Bates* v. *Little Rock*, 361 U. S. 516. While the exact situation which was before the Court in those cases is not present here, their underlying rationale necessarily, petitioner submits, controls disposition of the instant controversy.

There, this Court interpreted the Fourteenth Amendment as giving effective and realistic protection to the individual in the exercise of his right of freedom of association.

The correlation between freedom of association and privacy therein was demonstrated, and the need for group association to give practicable effect to the associational right which the Constitution secures was stressed. "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs". (See *N.A.A.C.P.* v. *Alabama* at p. 462.)

In both cases the Court found that the disclosure of the names of members of the N.A.A.C.P. would constitute a deterrent upon the exercise of rights of freedom of association of the rank and file members of the N.A.A.C.P. It found no valid state interest which would warrant the attempted encroachment on this area of personal liberty.

While the specific point decided in *N.A.A.C.P.* v. *Alabama* and *Bates* v. *Little Rock* was that the compelled disclosure of the names and addresses of the members of the Association was not allowable, the basis for that conclusion was that enforced identification of those connected with the N.A.A.C.P. would act to curb members and prospective members of the organization from exercising rights of freedom of association, and from engaging in group advocacy to further legitimate ends.

It is, therefore, the deterrent to the exercise of freedom of association and advocacy in furtherance of lawful objectives with which those cases were concerned. That the production of the N.A.A.C.P. membership list at the committee hearings will accomplish such a forbidden result is hardly open to doubt.

The court below justifies production of the membership list in question on the grounds that petitioner is not compelled to disclose indiscriminately all the names of his members, but merely to have available "records from which to testify regarding the associational status of certain specifically named individuals who have otherwise been identified in this record as having subversive connections." (See *infra*, at page 27.) To seek to distinguish the case at bar, however, on the grounds that here no physical sur-

render to state authorities of the entire membership list is required, petitioner respectfully submits, is to miss the whole thrust and import of this Court's holdings. The question which must be answered is whether what the state seeks to do places an unwarranted limitation upon the exercise of rights of freedom of speech and association. Cf. *American Communications Assn.* v. *Douds*, 339 U. S. 382; *United States* v. *Rumely*, 345 U. S. 41; *Sweezy* v. *New Hampshire*, 354 U. S. 234; *Shelton* v. *Tucker*, 364 U. S. 479.

The issue here is not whether petitioner is compelled to disclose the entire membership list of the N.A.A.C.P. or only the names of some members. The issue is whether petitioner can be compelled to produce his organization's membership list to testify concerning any person's associational status. Petitioner sought to assist the committee by agreeing to freely testify respecting the N.A.A.C.P. membership of any of these persons named as subversive. While there is doubt that this testimony could have been compelled on this record, petitioner waived his rights in this regard in an attempt to cooperate with the committee. In these circumstances, however, the inquiries are concerned chiefly with those accused of subversion. When, on the other hand, petitioner is required to produce the N.A.A.C.P. membership list for the purpose of verifying his answers about alleged subversives, the inference is that there is some connection between membership in the N.A.A.C.P. and subversive activities. Under those conditions the fundamental impact of the inquiries is to question the legitimacy of the organization. On this record, petitioner respectfully submits, no foundation has been laid to empower the state to take that step. Nothing said in *Barenblatt* v. *United States*, 360 U. S. 109; *Uphaus* v. *Wyman*, 360 U. S. 72; or more recently in *Wilkinson* v. *United States*, — U. S. —, 29 L. W. 4201; or *Braden* v. *United States*, — U. S. —, 29 L. W. 4210, supports a contrary conclusion.

2. Even considering *Barenblatt, Uphaus, Wilkinson* and *Braden* as standing for the broad proposition that the nature of Communist activity establishes the state's subordinating interest, the semblance of a valid legislative purpose does not suffice to justify state intrusion upon the protected area in which rights of freedom of association may be exercised. See *Watkins* v. *United States*, 354 U. S. 178, 198. Here, unlike the situation in *Barenblatt, Wilkinson* and *Braden*, petitioner himself was not accused of being a subversive, or of engaging in subversive activities or of having any connection with a subversive organization. Nor does *Uphaus* aid the state's cause, because it cannot be said that a nexus between the Miami Branch of the N.A.A.C.P. and subversive activities has been sufficiently established to support the demand for production of the organization's membership list.

Assuming *arguendo* that the committee was in truth seeking to determine the nature and extent of subversive penetration and infiltration of organizations operating in the field of race relations, it cannot use that premise as the basis for disregarding and levelling all constitutional safeguards to individual liberty erected to protect lawful activity. Cf. *Sweezy* v. *New Hampshire, supra*. Before the state can harass petitioner and force the production of the N.A.A.C.P. membership list, some reasonable basis must be established that either he or his organization is suspect.

The record discloses that each year, beginning in 1950, at its national convention, the N.A.A.C.P. had adopted resolutions barring Communists from membership in the organization (R. 69). Father Gibson explained the manner in which that policy was implemented (R. 203); and it was established that those persons charged with enforcement of the anti-Communist policy of the organization had found no evidence of any Communist infiltration in the Miami Branch in the last five years (R. 204, 267, 319). This testimony was not controverted.

It is true that an investigator named 14 persons alleged to be members of the Communist Party and of the N.A.A.C.P. in Miami; and 33 persons, who were charged with being either members of the Communist Party or active in Communist-front activities in Miami in the recent past, were believed to be members of the N.A.A.C.P. (R. 49-61). It is evident from the record, however, that neither the committee nor the investigator had any personal knowledge of any of these persons being either members of the Communist Party or of the N.A.A.C.P. (R. 142-151, 262, 460). Indeed, the one witness, Arlington Sands, upon whom the committee relied to give evidence on this matter from personal knowledge, disputed the investigator's testimony (R. 132-141).

Moreover, it was established that membership in the organization is on a year-to-year basis; that Arlington Sands did not know whether he was presently a member; that his N.A.A.C.P. activities predated 1950, and that he had not been to an N.A.A.C.P. meeting in over two years (R. 129-130). Thus, the conclusion is inescapable that whatever credible testimony there may be in this record in respect to an associational relationship with the N.A.A.C.P. of any of the persons charged with being members of the Communist Party, such relationship predated 1950. Further, petitioner submits that there is no evidence that any of the persons named are presently residents of Florida. If these persons are present in the state, they could have been called.

Counsel for the committee carefully refused to make a claim as to the extent or degree of Communist infiltration in the N.A.A.C.P. (R. 257). The evidence, upon which the court below relies to support a limitation on the unfettered exercise of personal freedoms at issue here, is the testimony of the committee's paid investigator. The mere unsupported statement of a paid investigator, that certain persons are subversive and have been or are members of an other-

wise legitimate organization, cannot afford a reasonable basis for interference with that organization or its members' right of freedom of association. Cf. *Uphaus* v. *Wyman, supra; Sweezy* v. *New Hampshire, supra.* Indeed, when the investigator's testimony is disputed by his informant, who alone possess personal knowledge, reliance upon the investigator's testimony to establish an overbalancing state interest means that a subordinating state interest sufficient to warrant interference with rights of freedom of association can be erected by the mere statement of governmental officials that such an interest is present. Needless to say, that rationale would condemn freedom of association and other cognate liberties, regarded as the indispensable prerequisite to the preservation of an open society, to early destruction.[3] Cf. *Braden* v. *United States, supra.*

Petitioner and the organization to which he belongs are pledged to fight racial discrimination and to seek to secure equal citizenship status for Negroes, as, according to the investigator for the committee, are the members of the Communist Party. Yet only a crass paternalism and a blind unawareness of the currents in present-day human relationships would mislead one to a conclusion that a taint of subversion is necessary for people and organizations to concern themselves with the need for eliminating racial inequality and injustice in the United States.

4. The record here clearly establishes that what is involved is investigation and harassment with the hope of discrediting and smearing the N.A.A.C.P. as being Communist directed. While the present committee had been preceded by two others, remedial legislation has yet to be enacted. Thus, to paraphrase Mr. Justice Brennan, it is

[3] At worst this Court is required to make its own independent evaluation of the evidentiary facts upon which the judgment below rests. See **Blackburn v. Alabama**, 361 U. S. 199; **Spano v. New York**, 360 U. S. 315.

difficult to conceive of how this indefinitely extended and cumulative investigation, even conceding that it may some day come to a point, can be of aid to valid legislation (see *Uphaus* v. *Wyman*, *supra*, at 102), or for that matter how any prospective legislation in this field can affect petitioner's organization. On the basis of this record, the conclusion is inevitable that the committee called petitioner and other N.A.A.C.P. officials to testify, not because there was a legitimate concern about subversive infiltration in the N.A.A.C.P., but in an attempt to demonstrate that N.A.A.C.P. efforts to eliminate racial discrimination in Florida was the produce of subversion. Obviously, if the organization could be so labelled, membership in it would become suspect and the deterrent effect upon freedom of association, stressed in *N.A.A.C.P.* v. *Alabama*, and *Bates* v. *Little Rock*, would be accomplished without the need for the entire N.A.A.C.P. membership list. Petitioner submits that such state interference is constitutionally impermissible.

There can be no doubt that the state may not subject petitioner to the requirement of producing the membership list of the N.A.A.C.P., merely because respondent disagrees or dislikes the organization's aims and activities. See *N.A.A.C.P.* v. *Alabama*; *Bates* v. *Little Rock*. No other basis for the attempted intrusion upon the associational relationship of the members of petitioner's organization has been demonstrated. For this reason, petitioner submits, the judgment of contempt cannot stand.[4] See *N.A.A.C.P.* v. *Alabama*, *supra*; *Bates* v. *Little Rock*, *supra*; *Sweezy* v. *New Hampshire*, *supra*. Cf. *Uphaus* v. *Wyman*, *supra*.

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[4] Petitioner took the position below that Chapter 57-207, Laws of Florida, 1959, was unconstitutionally vague and inexplicit. See **Watkins v. United States, supra.** In view of this Court's holding in the **Wilkinson** and **Braden** cases, however, that contention seems to have lost most of its potency. While not abandoning the objection, petitioner has decided to concentrate on what appears to be the more obvious fallacies which underpin the judgment below.

CONCLUSION

For the reasons hereinabove stated, this petition for writ of certiorari should be granted.

Respectfully submitted,

ROBERT L. CARTER,
29 West 40th Street,
New York 18, New York,

G. E. GRAVES, JR.,
802 N. W. Second Avenue,
Miami, Florida,

Attorneys for Petitioner.

Dated: March 17, 1961

APPENDIX A

Opinion of Supreme Court of Florida

THORNAL, *J.*:

By direct appeal, we are requested to review an order of the circuit court upholding the validity of Chapter 59-207, Laws of Florida, 1959, and adjudging petitioner Gibson guilty of contempt of Court for failure to comply with a subpoena duces tecum issued by appellee Committee.

We must pass upon the constitutionality of Chapter 59-207, Laws of Florida, 1959. We must also determine whether the compelled response to the subpoena duces tecum would be violative of various constitutional rights asserted by appellant.

Appellant Gibson is admittedly the president of the Miami branch of the National Association for the Advancement of Colored People. He had been such for at least five years prior to the critical hearing on November 5, 1959. At the time of the Committee hearing, appellant also admitted that he held in his custody the then current list containing the names of the members of Miami branch of the N.A.A.C.P. He had been served with a subpoena duces tecum directing him to have the list available at the hearing of the Committee on November 5, 1959. The record reveals that prior to the time appellant Gibson was called to testify, an investigator of appellee Committee identified by name some fifty-one persons whom he stated were known members of the Communist Party, or its affiliates. All of these had in times recently past resided or engaged in various activities in Dade County, Florida. The investigator identified fourteen of these people by name and Communist Party membership card number. He testified that these fourteen had been known to have participated in the affairs of Miami branch of the N.A.A.C.P. When appellant Gibson was called to testify the attorney for the appellee Committee identified an allegedly known Communist by name and requested Gibson to refer to the membership list

and advise whether such allegedly known Communist was listed as a member of Miami branch of N.A.A.C.P. Gibson refused. He stated that he would not bring the list to the Committee hearing as required by the subpoena. For various reasons which we shall mention, he refused to comply with the prior decision of this Court in the same matter by having the list available for reference by him only, even though he had been assured that he would not be required to file the entire list in evidence where it would be subject to public inspection. Following the procedure delineated by the Statute, the appellee Committee requested the circuit judge to issue a rule nisi and grant to appellant an opportunity to answer the questions or else show cause why he should not be charged in contempt. The judge directed the witness to have the membership list available and answer the questions propounded. Again appellant declined. Thereupon, he was adjudged to be in direct contempt of Court and was sentenced to a term of six months in the Leon County jail and to pay a fine of $1,200. We are now requested to reverse this order.

It is the contention of the appellant Gibson that Chapter 59-207, Laws of Florida, 1959, is unconstitutional. He further contends that the order which compels him to have available the membership list of N.A.A.C.P. for reference by him only as an authentic basis for his testimony before the appellee Committee does violence to his rights of freedom of speech and assembly. Similar constitutional rights of all members of N.A.A.C.P. are allegedly violated.

The appellee Committee contends that the subject statute is constitutional. It asserts that the compelled disclosure of the associational relations of specifically identified alleged subversives does no violence to the constitutionally protected rights of appellant Gibson or other legitimate good faith members of N.A.A.C.P.

We consider it totally unnecessary to burden this opinion with any elaborate dissertation on the constitutionality

of Chapter 59-207, Laws of Florida, 1959. For all practical purposes, this statute is identical with Chapter 57-125, Laws of Florida, 1957, which we upheld against the same identical assault by this same appellant in Gibson v. Florida Legislative Investigation Committee, Fla. 108 So. 2d 729, cer. den., 360 U. S. 919. The 1959 statute is merely a legislative renewal and continuation of the authority of the appellee Committee which had its origin in the 1957 statute which we discussed in considerable detail in the case last cited. The points there made as the basis for the assault on the constitutionality of the statute are repeated in the instant appeal. The appellant certainly has a right to raise doubts as to the validity of an act of the Legislature. However, we do not deem it necessary to repeat in detail the reasons which we have heretofore given for upholding an identical act. We will here do no more than to hold Chapter 59-207, supra, constitutional on the authority of Gibson v. Florida Legislative Investigation Committee, supra.

In our opinion in the case last cited the constitutional rights of the rank and file bona fide members of Miami Branch of N.A.A.C.P. were frankly recognized and given judicial protection against illegal encroachment. Appellant, however, again asserts in behalf of himself and for the benefit of all other members of N.A.A.C.P. a constitutional freedom of speech and assembly which includes associational privacy. He relies on the First Amendment to the Constitution of the United States. Because of the due process provisions of the Fourteenth Amendment to the Constitution of the United States, appellant insists that the states are bound to recognize these so-called First Amendment rights.

While renewing his reliance on N.A.A.C.P. v. Alabama, 357 U. S. 449, 78 S. Ct. 1163, appellant urges additional support from Bates v. City of Little Rock, 361 U. S. 516, 80 S. Ct. 412. If the factual situation were analogous to the last cited cases we would, of course, deem ourselves bound by those decisions and rule accordingly. However, the instant factual situation is markedly different.

In N.A.A.C.P. v. Alabama, supra, the State attempted to require the Association to file its entire membership list with the Secretary of State, allegedly in order to determine the nature of the business of the non-profit corporation. Similarly, in Bates v. City of Little Rock, supra, the municipality by ordinance attempted to require the Association to file its entire membership list with city officials in order to enable them to determine the applicability of certain license tax requirements. In both instances the State agency attempted to require the publication of the entire membership of the Association. In both instances community antipathy to N.A.A.C.P. was held to be an established fact. In both instances there was a showing deemed to be adequate to the effect that the revelation of the list of members would completely stultify the functioning of the Association because of fear of economic and social retribution and actual threats and fears of threats of physical violence. In other words, it was held to have been shown in those cases that if the names of the good faith members of N.A.A.C.P. were publicly revealed, this fact alone would have such a deterrent effect on their continued membership or the acquisition of new members that the organization would completely disintegrate. In this manner the memberships' freedom of speech and right of assembly would be totally destroyed.

If we were here dealing with a compulsory indiscriminate disclosure of the entire membership list of N.A.A.C.P. we would be confronted with the very serious problem of balancing appellant's rights of free speech and association against potential encroachments by threatened governmental action. However, the instant situation does not make it necessary to evaluate the claimed deterrent effect of revealing the membership list against a showing of subordinating public interest. We recognize the rule that when the so-called deterrent influence by contemplated governmental action is established, the burden moves to

the government to prove clearly and unequivocally an impelling public need that justifies subordinating the constitutionally assured private right to the exercise of governmental power. N.A.A.C.P. v. Alabama, supra; Bates v. City of Little Rock, supra. The mere fact that a particular governmental power is admitted to exist, does not in every instance justify its exertion. Even when not absolutes in themselves, constitutionally provided individual rights will be subordinated to the exercise of a particular power of government only in those instances when it is made clear and beyond question that governmental action is essential to the public interest.

In the case now here all that has been required is that appellant have available records from which to testify regarding the associational status of certain specifically named individuals who have otherwise been identified in this record as having subversive connections. Uphaus v. Wyman, 360 U. S. 72.

As was the case in Uphaus the testimony in this record unequivocally reports that numbers of Communist Party members or affiliates have on various occasions attended meetings or participated in the affairs of Miami branch of N.A.A.C.P. This in itself suggests adequate justification for the inquiry upheld by the circuit judge. The announced purpose of the inquiry is to determine whether persons with Communist connections or affiliations are infiltrating the legitimate organizations of the State. Under the rule which we announced in Gibson v. Florida Legislative Investigation Committee, supra, and followed by the circuit judge here, there is no danger of encroachment upon the constitutionally guarded rights of appellant or other legitimate, bona fide members of N.A.A.C.P. The rule which we follow does not disturb the delicate equilibrium between the associational rights of rank and file members of N.A.A.C.P. on the one hand and the power of the State to ascertain the whereabouts of those who pose serious threats to its security on the other.

Appellant simply urges us to construct a constitutional city of refuge which opens its precincts to those who seek to speak freely and assemble righteously in the advocacy of their just causes. In so doing, however, he would have us provide ideological asylum for those who would destroy by violence the very foundations upon which their governmental sanctuary stands. An appeal so illogical, we think, cannot merit judicial sanction.

We conclude, as we have done before, that the appellant as the official custodian of the subject records can be required to refer to them in order to authenticate his testimony. We do not construe the order of the circuit judge as directing that the records be publicly exposed or delivered to the committee or to any one else or to be filed in this cause. As so construed we can find no constitutional objection to the subject order. On the contrary, it comports with our mandate in Gibson v. Florida Legislative Investigation Committee, supra. This is not an order directing the revelation of the rank and file members of Miami branch of N.A.A.C.P. Under the subject order, those who are legitimate and good faith members of the Association are adequately protected against the alleged retribution which it is claimed would follow upon the unjustifiable publication of the entire list of members.

On the other hand, the particular individuals whose otherwise subversive connections have been revealed are not entitled to the same associational privacy. Stated otherwise, when an individual is identified as one who advocates the violent destruction of the system from which he seeks protection, then the public interest in obtaining light on his other associational activities is sufficient to subordinate his claimed rights of free speech and assembly to the interest of the general good. Barenblatt v. United States, 360 U. S. 109.

There is no error in the order under attack. It is, therefore, affirmed.

APPENDIX B

Opinion of Supreme Court of Florida in Graham v. Florida Legislative Investigation Committee

THORNAL, *J.*:

Appellant Graham seeks reversal of an order of the circuit court upholding the validity of Chapter 59-207, Laws of Florida, 1959, and adjudging him guilty of contempt of court for refusing to answer certain questions propounded to him by the appellee Committee.

We are requested to pass upon the constitutionality of Chapter 59-207, Laws of Florida, 1959. We must also determine whether various constitutional rights of appellant were violated by the order of the circuit court directing him to answer certain questions propounded by the appellee Committee.

Appellant Graham has appealed to us on two other occasions in connection with matters relating to the inquiry being pursued by the appellee. In re: Petition of Edward T. Graham, etc., Fla. 1958, 104 So. 2d 16; Gibson et al. v. Florida Legislative Investigation Committee, Fla. 1959, 108 So. 2d 729.

At a hearing conducted by appellee Committee on November 4, 1959, the attorney for the Committee propounded to the appellant the following question:

"Are you presently a member of the N.A.A.C.P.?" Other questions involving his possible N.A.A.C.P. membership were also asked. The one we quote is typical. The witness inquired as to the pertinency of the question. He was informed that the Committee desired to ascertain whether he was a member of the N.A.A.C.P. in order to follow with questions regarding possible N.A.A.C.P. membership by certain other individuals who had previously been identified as members of the Communist Party. Graham declined to answer the question on the ground that compulsory response would violate his First Amendment

rights of free speech and assembly. He stated that if he should reveal membership in N.A.A.C.P. he would be exposed to social, economic, and perhaps physical abuses because of a community antagonism toward the organization and its program. The witness stated that the revelation of the names of the members of N.A.A.C.P. would result in disastrous reprisals against them in the form of threats of physical violence, loss of jobs, and harassment and annoyance in many forms. He asserted that the disclosure of membership in N.A.A.C.P. would cause the withdrawal from the organization by current members and the refusal of others to become members. This would result in substantially handicapping the organization in the accomplishment of its program. Ultimately N.A.A.C.P. would become completely non-existent in Florida. There was considerable testimony regarding the deterrent effect of compelled disclosure of membership in the N.A.A.C.P. The testimony that was offered and other testimony that was proffered tended to corroborate the statements of the appellant Graham regarding community attitude toward the organization and its members. The appellee Committee offered no testimony regarding the public need which would justify obtaining the requested information from this particular witness. When the witness declined to answer the Committee's inquiry he was cited by the circuit judge to show cause why he should not be adjudged in contempt of Court. Thereafter the matter was heard by the circuit judge and testimony was given or proffered to support appellant's concern over the compelled disclosure of association with the N.A.A.C.P. Again the respondent Committee offered no testimony to support the State's claim of a compelling need for this particular testimony from this particular witness. However, the circuit judge concluded that there was no competent reliable evidence showing any substantial risk of deterrent effect on the membership of N.A.A.C.P. that would result from disclosure of affiliation with the

organization. He further found that "facts and circumstances of the proceeding at bar are such that the interest of the State is so grave, pressing, and compelling," that the constitutional rights of the witness should yield to the asserted power of the State to compel the disclosure of the desired information. The witness continued to decline to answer. He was sentenced to six months in jail and to pay a fine of $1,200.00 with an additional six months in jail upon failure to pay the fine. It is this judgment of contempt that we are now asked to reverse.

It is unnecessary to discuss at length the matter of the constitutionality of Chapter 59-207, Laws of Florida, 1959. The circuit judge ruled correctly in upholding the validity of the act. We have approevd his ruling in this regard in Gibson v. Florida Legislative Investigation Committee, opinion filed this day.

The asserted constitutional right of the appellant to decline to answer the question propounded causes much more concern. It should be remembered that the critical question simply was, "Are you a member of N.A.A.C.P.?" This witness was not interrogated as to any affiliation with the Communist Party or its organizational satellites. We are not here concerned with any effort to require the witness to respond to inquiries which would suggest any subversive activity on his part. In fact, the records compiled by the appellee Committee suggest that there is no adverse inference to be drawn from the Committee's interrogation of the witness Graham.

Although the circuit judge appears to have concluded that the record was devoid of believable evidence regarding the deterrent effect of compelled disclosure of N.A.A.C.P. membership, our own examination of the record certainly leads us to conclude that there was considerable testimony with reference to possible reprisals against any known active leader of N.A.A.C.P. Furthermore, the appellee Committee offered no testimony whatever to contradict the

testimony of appellant's witness on this matter of the deterrent effect of disclosure.

We should bear in mind that the legislative justification for the authorization of this Committee and its investigatory powers is to inform itself on the matter of possible Communist infiltration into organizations which are active in the field of race relations. It is now well established that First Amendment rights will be subordinated to government action whenever it is clearly demonstrated that there is a pressing and compelling public justification for such action. However, it is equally well established that in order to justify subordinating the private right to public action, the announced public necessity must be established clearly and unequivocally. Otherwise, the guarantees of the First Amendment are adequate as a basis on which to resist encroachment by the government.

The necessity for disclosure of membership by this witness was not supported by the record. In fact, we have held in Gibson v. Florida Legislative Investigation Committee, filed this day, that the information regarding affiliations of allegedly known Communists could be obtained from the witness Theodore R. Gibson. Admittedly, he is president of the Miami branch of the N.A.A.C.P. and has custody of the membership list. The Supreme Court of the United States has consistently held that the right of legitimate associational privacy is an aspect of the right to assemble and ~~to~~ speak freely in the advocacy of beliefs guaranteed by the First Amendment to the Constitution of the United States. Such guarantees constitute restrictions on State action under the due process clause of the Fourteenth Amendment to the Constitution of the United States. These individual freedoms can not be suppressed or impaired directly or indirectly by governmental action absent a showing that the State labors under a compelling and pressing need sufficient to justify encroachment on the individual freedom.

The burden is upon the State to prove the compulsion of the public need. It is now too late in the day to question the authoritative effect and broad scope of decisions of the Supreme Court of the United States that sustain the rights of individuals such as this appellant to associational privacy against asserted governmental action. Even if we personally disagree with these decisions, we must recognize our judicial obligation to apply them in appropriate situations as being the pronouncement of a higher authority on the subject. On the showing made by the instant record, the appellant was supported in his refusal to answer the quoted inquiry by the decisions of the Supreme Court of the United States in Watkins v. United States, 354 U. S. 178, 1 L. Ed. 2d 1273, 77 S. Ct. 1173; N.A.A.C.P. v. Alabama, 357 U. S. 449, 2 L. Ed. 2d 1488, 78 S. Ct. 1163 and Bates v. City of Little Rock, 361 U. S. 516, 80 S. Ct. 412.

We have not overlooked the contended applicability of Barenblatt v. United States, 360 U. S. 109, 3 L. Ed. 2d 1115, 79 S. Ct. 1081, as a judicial support for the rule of the trial judge. We think, however, that Barenblatt does not sustain the contempt order here. On the contrary, it demonstrates the rule which we have heretofore announced. The question which Barenblatt refused to answer was, "Are you now a member of the Communist Party?" He grounded his refusal on the First Amendment. He did not seek cover under the absolute protection of the Fifth Amendment against self-incrimination. The Supreme Court of the United States judicially recognized the close connection between the Communist Party and the violent overthrow of the established government. It took note of its consistent refusal to view the Communist Party as an ordinary political organization and recalled that it had upheld legislative enactments that controlled Communist activities. In other words, the Court judicially recognized the compelling public necessity to prevent the spread of Communism and its influence throughout this country. This compulsion was suf-

ficient to subordinate Barenblatt's First Amendment claims to government action. In the instant case, while it is true that the appellee Committee is seeking out the locale of subversives, the immediate point in inquiry so far as appellant is concerned, is his associational relationship with an organization perfectly legitimate but allegedly unpopular in the community. In Barenblatt the claimed right of privacy was asserted to avoid revelation of membership in an organization whose primary objective was the violent overthrow of our government. The government's interest in preventing the accomplishment of the objectives of such an organization justified the encroachment on the asserted right of privacy. In the instant case the objectives of the organization are shown to be legitimate and there is an absence of any showing of a compelling public need that would support encroachment on appellant's constitutionally guaranteed private rights.

The order adjudging the appellant in contempt of Court is reversed.

It is so ordered.